U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 2 2004

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was convicted of an aggravated felony and subsequently removed from the United States at government expense on September 10, 1999. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to study in the United States.

The director determined that the applicant failed to establish that the positive factors in his application outweighed the negative factors. The director denied the I-212 application accordingly. *Decision of the Director*, dated July 31, 2003.

On appeal, counsel states that the applicant did not intend to kill his mother and that the applicant's mother did not accuse her son. Counsel further contends that the applicant has no family ties in El Salvador. *Form I-290B*, dated August 25, 2003. To support these assertions, counsel submits an affidavit of the applicant's mother; an affidavit from his pastor; affidavits of support and copies of tax and scholastic documents of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> (A) Certain aliens previously removed.-
>
> . . . .
>
> (ii) [A]ny alien . . . who-
>
> (I) Has been ordered removed under section 240 or any other provision of law . . . is inadmissible.
>
> . . . .
>
> (iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The record reflects that on December 16, 1998, the applicant was convicted in Los Angeles County Superior Court of assault with a deadly weapon and by means of force likely to produce great bodily injury. The applicant was sentenced to confinement for a period of 365 days.

The favorable factor in the application is the hardship imposed on the applicant's mother by his inadmissibility to the United States. The AAO notes that the record does not assert any specific claims of hardship to the applicant's mother.

The unfavorable factor in the instant application is the applicant's criminal history including conviction for an aggravated felony. The AAO notes that no person who at any time has been convicted of an aggravated felony shall be regarded as a person of good moral character under U.S. immigration law despite the assertions of the friends and family members of the applicant.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.